

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of:)	
)	
Bright House Networks, LLC)	CSR 6542-E, 6543-E & 6545-E
)	
Charter Communications)	CSR 6492-E, 6493-E, 6494-E & 6495-E
)	
Coxcom, Inc. d/b/a Cox Communications Tucson)	CSR 6393-E
)	
Cox Southwest Holdings, L.P.)	CSR 6628-E, 6629-E & 6630-E
)	
MCC Georgia LLC)	CSR 6740-E, 6784-E, 6861-E & 6892-E
)	
Mediacom Illinois LLC)	CSR 6780-E
)	
Texas and Kansas City Cable Partners, L.P. d/b/a)	CSR 6433-E & 6434-E
Time Warner Cable)	
)	
Time Warner Entertainment Company, L.P. d/b/a)	CSR 6439-E & 6444-E
Time Warner Cable)	
)	
Twenty Petitions for Determination of Effective)	
Competition in Forty-Seven Local Franchise)	
Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: September 23, 2005

Released: September 27, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers twenty petitions which cable operators (the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules for a determination that such operators are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,¹ as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.² The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present

¹47 C.F.R. § 76.906.

²See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

within the relevant franchise area.³

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁴ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁵ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁶ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁷ We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.⁸ The Cable Operators assert that they are the

³See 47 C.F.R. §§ 76.906 & 907.

⁴ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁵See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁶ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁷See 47 C.F.R. § 76.905(g).

⁸ Bright House Petition CSR 6543-E at 7-9; Bright House Petition CSR 6545-E at 7-9; Charter Petition CSR 6492-E at 6-7; Charter Petition CSR 6493-E at 6-7; Charter Petition CSR 6494-E at 6-7; Charter Petition CSR 6495-E at 6-7; ; Coxcom Petition CSR 6393-E at 7-9; Cox Southwest Petition CSR 6628-E at 7-9; Cox Southwest Petition CSR 6629-E at 7-9; Cox Southwest Petition CSR 6630-E at 7-9; MCC Petition CSR 6740-E at 6-8; MCC Petition CSR 6892-E at 6-7; Mediacom Illinois Petition CSR 6780-E at 6-7; Texas and Kansas City Cable Petition CSR 6433-E at 7-8; Texas and Kansas City Cable Petition CSR 6434-E at 7-8; Time Warner Entertainment Petition CSR 6439-E at 7-9; Time Warner Entertainment Petition CSR 6444-E at 8-10. MCC Petition CSR 6892-E and Mediacom Illinois Petition CSR 6780-E were provided on a zip code plus four basis. The remaining Bright House Petitions CSR 6543-E/6545-E, Charter Petitions CSR 6492-E/CSR 6493-E/CSR 6494-E/CSR 6495-E, Coxcom Petition CSR 6393-E, Cox Southwest Petitions CSR 6628-E/CSR 6629-E/CSR 6630-E, MCC Petition CSR 6740-E, Texas and Kansas

(continued...)

largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.⁹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

5. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁰ Four Cable Operators listed on Attachment A (Bright House Networks CSR 6542-E, Charter Communications CSR 6492-E, MCC Georgia CSRs 6740-E/6784-E/6861-E/6892-E, and Time Warner Entertainment CSR 6444-E) provided information showing that less than 30 percent of the households within its franchise area subscribe to its cable services. Accordingly, we conclude that that the Cable Operators have demonstrated the existence of low penetration effective competition under our rules.

III. ORDERING CLAUSE

6. Accordingly, **IT IS ORDERED** that the petitions filed by Bright House Networks, LLC, Charter Communications, Coxcom, Inc. d/b/a Cox Communications Tucson, Cox Southwest Holdings, L.P., MCC Georgia LLC, Mediacom Illinois LLC, Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable, and Time Warner Entertainment Company, L.P. d/b/a Time Warner Cable for a determination of effective competition in the communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

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City Cable Petitions CSR 6433-E/6434-E, and Time Warner Entertainment Petitions CSR 6439-E/6444-E reported DBS subscribership on a five digit zip code basis that was adjusted based upon an allocation methodology previously approved by the Commission. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002).

⁹ *Id.*

¹⁰ 47 U.S.C. § 543(1)(1)(A).

¹¹ 47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition

Bright House Networks: CSR 6543-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Brooksville	FL0241 FL0663	23.7%	3220	763

Bright House Networks: CSR 6545-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Dade City	FL0715	45.6%	2399	1094
Zephyrhills	FL0679	28.9%	4944	1430

Charter Communications: CSR 6492-E & 6495-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Gainesville	GA0017	22.6%	8537	1932
Hall County	GA0104	26.2%	36323	9522
Buford	GA0662 GA0274	31.8%	3794	1207
Sugar Hill	GA0328	31.7%	4004	1269

Charter Communications: CSR 6493-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Comer	GA0464	40.2%	391	157

Charter Communications: CSR 6494-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Baldwin	GA0206	19%	10003	1902

CoxCom, Inc. d/b/a Cox Communications Tucson: CSR 6393-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
City of Tucson	AZ0159	16.8%	192891	32448
Town of Sahuarita	AZ0345	25.6%	1155	296

Cox Southwest Holdings, L.P.: CSR 6628-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Town of Como	TX2361	68%	216	147
City of Sulphur Springs	TX0135	40.5%	5780	2342

Cox Southwest Holdings, L.P.: CSR 6629-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
City of Gainesville	TX0031	31.7%	5969	1889

Cox Southwest Holdings, L.P.: CSR 6630-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
City of Hearne	TX0072	37.8%	1710	646

MCC Georgia LLC: CSR 6740-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Edison	GA0362	27.9%	512	143
Fort Gaines	GA0363	34.3%	429	147
Richland	GA0360	53.4%	624	333

MCC Georgia LLC: CSR 6892-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Lee	GA0728	15.7%	7163	1123
Terrell	GA0727 GA0900	28%	1805	505

Mediacom Illinois LLC: CSR 6780-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Arcola	IL0889	30.7%	1031	316
Arthur	IL0893	26.1%	915	239
Camargo	IL1592	15.5%	187	29
Tuscola	IL1191	21.2%	1885	399
Villa Grove	IL1623	21%	1033	217

Texas and Kansas City Cable Partners, L.P.: CSR 6433-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
City of Uvalde	TX0164	16.4%	4796	784

Texas and Kansas City Cable Partners, L.P.: CSR 6434-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Town of South Padre Island	TX0358	24.9%	1211	302

Time Warner Entertainment Company, L.P.: CSR 6439-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Village of Belcher	LA0520	27.3%	99	27
Village of Gilliam	LA0518	22.5%	71	16
Village of Hosston	LA0517	34.2%	152	52

Time Warner Entertainment Company, L.P.: CSR 6444-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Parish of Caddo	LA0236	18.8%	14911	2796
Town of Greenwood	LA0341	27.6%	964	266
City of Shreveport	LA0082	16.3%	78662	12792
Town of Stonewall	LA0458	29.6%	642	190
City of Waskom	TX1148	31.9%	790	252

Cable Operator Subject to Low Penetration Effective Competition**Bright House Networks, LLC: CSR 6542-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Bowling Green	815	65	8%

Charter Communications: CSR 6492-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Gwinnett County	156438	24021	15.4%
Oakwood	1031	223	21.6%

MCC Georgia LLC: CSR 6740-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Arlington	573	145	25.3%
Lumpkin	552	133	24.1%

MCC Georgia LLC: CSR 6784-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Grady	5153	669	13%
Thomas	7888	1402	17.8%

MCC Georgia LLC: CSR 6861-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Randolph	1076	104	9.7%

MCC Georgia LLC: CSR 6892-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Camilla	1994	346	17.4%
Mitchell	4188	206	4.9%
Worth	5320	578	10.9%

Time Warner Entertainment Company, L.P.: CSR 6444-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Parish of DeSoto	5837	481	8.2%

CPR = Percent DBS penetration

+ = See Cable Operator Petitions